EXHIBIT B

d920repa Argument

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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NML CAPITAL, LTD.,

Plaintiff,

v. 03 CV 8845

REPUBLIC OF ARGENTINA,

Defendant.

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Dieter Scheck,

Plaintiff, 10 CV 5167

v.

REPUBLIC OF ARGENTINA

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New York, N.Y.
September 3, 2013
2:46 p.m.

Before:

HON. THOMAS P. GRIESA,

District Judge

APPEARANCES

For Plaintiffs:

ROBERT COHEN
DANIEL RAPPORT
MARTIN GUSY

For Defendants:
CARMINE BOCCUZZI, JR.
LANCE CROFFOOT-SUEDE
JAMES KERR

(In open court)
THE DEPUTY CLERK: All rise.
Be seated.
(Case called)
THE DEPUTY CLERK: Counsel, state your last name before you speak.
THE COURT: Before the counsel go ahead with what they wish to present, I would just like to ask this. NML, just refresh my memory, NML is one party or --
MR. COHEN: One party.
THE COURT: -- or all of the parties who have prevailed on the pari passu?
MR. COHEN: We are one of several prejudgement plaintiffs in the pari passu actions. There are others.
THE COURT: Now, there are other plaintiffs besides the -- I'll talk about, using it loosely, the pari passu plaintiffs. There are other plaintiffs who are seeking discovery through these subpoenas, right?
MR. COHEN: Of the three plaintiffs who are seeking discovery, one is not a pari passu plaintiff, two of us are.
THE COURT: The two who are --
MR. COHEN: The Aurelius plaintiffs and NML are both pari passu plaintiffs. The Scheck plaintiffs are not.
THE COURT: Who wishes to go first, the people who want to vacate the subpoenas, or the people in support of the

subpoenas, or what.

MR. COHEN: Your Honor, I would be happy to start, because there are both document requests and interrogatories to Argentina, which are common to the three of us and, also, bank subpoenas that the Aurelius plaintiffs have filed and are fully briefed. NML has bank subpoenas pending, but are not fully briefed. But the common element of the motions before you this afternoon are the requests for discovery from Argentina. And I can start there, your Honor.

Despite the August decision last year of the Second Circuit which affirmed your Honor's decision with respect to discovery from two banks, Bank of America and BNA, that FSIA, Foreign Sovereign Immunities Act immunity does not have anything to do with post judgment discovery. It is not a limitation on post judgment discovery, in that parties are entitled to discovery with respect to the assets of their judgment debtor. And the FSA imposes no restrictions on that. And despite your Honor's ruling in March, which in the Aurelius case found that Argentina's motion for a protective order with respect to the discovery that was served on Argentina should be denied because of what the Second Circuit held, we still see in the papers before you at least some remnants of that argument. And I think we should --

THE COURT: Remnants of what argument?

MR. COHEN: That the FSIA immunity limits the

discovery that a post judgment plaintiff may take of the debtor. They do that, I think, because they have a petition for certiorari pending in the Supreme Court for review of the Second Circuit decision. But for purposes of these motions, we think those issues are behind us, at least for now.

THE COURT: So what issue do I need to deal with?

MR. COHEN: Well, there are some other issues that they have raised that are common to us. In particular, an --

THE COURT: The Republic has raised.

MR. COHEN: The Republic has raised in objecting to the discovery requests by the three plaintiffs. In particular, they have argued that the restriction in the Foreign Sovereign Immunities Act with respect to military property, should deprive us of discovery with respect to that property. They have argued that the Vienna Convention on Consular Relations puts a limitation on discovery with respect to diplomatic accounts. And they have argued that the Foreign Sovereign Immunities Act provision with respect to central banks in the limitation on discovery, the recovery of assets from central banks puts a limit on discovery that we can take with respect to the central bank. And I'd just like to address each of those for a moment.

THE COURT: Just refresh my memory. Just go back. What is the discovery that you were seeking?

MR. COHEN: We are, each us, is asking for discovery

with respect to the assets of Argentina, Argentina defined, slightly differently among us. But ministries included, various entities that are corporations owned by Argentina through which it does its business. We each have a slightly different list of entities that we include within the definition of Argentina. But we're asking for assets of Argentina. Again, slightly different variations on the theme. We've limited, for the purposes of this round of discovery, to assets in, or partially in, the United States. Aurelius and the Scheck plaintiffs have asked for world-wide discovery, slightly very different themes. But all of us are asking for fairly broad discovery about assets. And we, unlike the other two plaintiffs, have asked for information with respect to four entities which we think can show are alter egos of Argentina. So our discovery of Argentina is asset and alter ego. And the other two plaintiffs are just asset-related discovery. And in opposition to all three of our requests for information, Argentina has argued that they should be able to carve out the three categories of information that I described; military, diplomatic, and central bank. And I would just say with respect to each of them, what they are saying is we may not be able to execute on that information and, therefore, we're not entitled to it. Our position is there are exceptions to each of those limitations. And if we can establish them, we can take those assets. And we're entitled to the discovery, so

that we can come to your Honor and say this asset meets the exception and we're entitled to it. So for example, with respect to the central bank, there is a provision in the Foreign Sovereign Immunities Act that exempts central bank assets from execution. But there is an exception that says that if we can demonstrate with specificity that the funds are not being used for central bank functions, as such functions are normally understood, then we can take it. That was the Second Circuit's decision that vacated the attachments that we had won on the central bank deposit at the federal reserve. They vacated our attachment, but with that caveat. If we can come back with specificity, showing that those assets are not being used for traditional central banking activity, we can take the asset. The only way we can show that, is by taking discovery.

Similarly, with respect to military property, the Foreign Sovereign Immunities Act makes property of a sovereign immune from attachment and execution if the property is, or is intended to be used, in connection with the military activity.

So, if there is an account in the name of the defense ministry, but it's being used to pay the country's debts, it's not intended to be used for military activity. The mere fact that it is in the name of the account that is in the name of the Army does not automatically protect it. We are entitled to find out if there is such an account, and then to see if we can

meet the standard to show that it is not intended to be and is not being used in connection with military activity.

These are not absolute prohibitions on the attachment of assets or the execution. They are limited.

THE COURT: What is the exception about the military?

MR. COHEN: The military says it's immune if the property is, or is intended to be, used in connection with a military activity and: (a) is of a military character, or(b) is under the control of a military authority or defense agency.

THE COURT: What are you reading from?

MR. COHEN: This is the Foreign Sovereign Immunities Act, your Honor, 1611.

THE COURT: Okay.

MR. COHEN: So these are limited --

THE COURT: Exceptions even as to the military.

MR. COHEN: Yes, your Honor.

THE COURT: Okay.

MR. COHEN: And with respect to diplomatic accounts, they cite to the Vienna Convention. The Vienna Convention, again, immunizes -- and this is by treaty, this is not in the Foreign Sovereign Immunities Act. But the Foreign Sovereign Immunities Act is subject to any treaties that the United States has entered into. The diplomatic assets that are protected are those used for diplomatic purposes. We are entitled to determine whether an account that happens to be in

the name of the embassy is, in fact, being used for diplomatic purposes. If it were otherwise, Argentina would repay its debt to the exchange bond holders by putting it into accounts in the name of the embassy in New York. That can't be what was intended, and it clearly isn't what was intended by the Vienna Convention.

It also is intended to limit subpoenas to embassies and that sort of thing. We're not subpoenaing the records of an embassy, we are asking the sovereign country to tell us what it knows about accounts that are within this Court's jurisdiction.

THE COURT: The Vienna Convention is what you are talking about.

MR. COHEN: Yes, your Honor.

THE COURT: Okay.

MR. COHEN: So we think that, to the extent that Argentina is relying on the Foreign Sovereign Immunities Act, arguments to object to our discovery, or the Vienna Convention, those deserve to be rejected out of hand at this point.

And now, your Honor, I am happy to talk more specifically about NML's discovery of Argentina. We think that the discovery with respect to alter egos, and as to assets, is almost plain vanilla-type stuff. The objections we have got are, with respect to assets, the answers we have gotten, we have no assets that are used for commercial activity in the

United States. I'd say that puts the rabbit in the hat, your Honor. They can't self determine whether the assets are, or are not, used for commercial activity in the United States.

THE COURT: Well, how does the alter ego thing get into this?

MR. COHEN: We have asked for discovery with respect to the relationship between Argentina, the sovereign, and the entities that -- the four entities that we have named. Whether they have -- we want to see the communications. We want to understand their obligations, one to other. Because it's our view that these four entities are controlled day-to-day by Argentina, and should be responsible for Argentina's debts to us under the Bank Act of Supreme Court test, which says if we can show that they are in effect the agent of Argentina, or they are engaged in fraudulent activity through the agent, then they are the alter ego, and they are responsible for the debts of Argentina.

And these are not fishing expeditions. We have tried --

THE COURT: I don't quite understand why you need to get into alter ego issues about the military.

MR. COHEN: Well, those are separate, your Honor.

The military assets respect are with respect to the asset discovery. They have objected to giving us information about assets, to the extent that they may be held by the

military. They have rejected to giving us information about assets to the extent they may be in diplomatic accounts, or central bank assets, because of the argument that there is an immunity in the Foreign Sovereign Immunities Act with respect to those assets. So that's asset related. And those are the objections that they have made on that side of our discovery.

Then we have alter ego discovery, where we have asked for the relationship between Argentina and four entities. And some of them, your Honor, have been before you in the past; BNA, BCRA, central bank, Enarsa, which we attempted to show as an alter ego and to seize a cargo of natural gas that was being sold through Morgan Stanley. And an entity called YPF, which was recently nationalized by Argentina and is an international oil production and distribution company, now owned, majority owned, by Argentina. With respect to those four --

THE COURT: Go over those. The --

MR. COHEN: BNA is the bank that's a hundred percent owned by Argentina, operates in New York.

THE COURT: And then?

MR. COHEN: Then there is BCRA, which is the acronym for the Central Bank of Argentina, which as you know is the subject of a multi-year litigation of attachment of its funds at the Federal Reserve Bank here in New York.

THE COURT: Go ahead.

MR. COHEN: And ENARSA, which is an acronym for an

Argentine-controlled entity that is involved in the acquisition and distribution of natural gas and other heating and other products that are distributed in Argentina, and are acquired from suppliers around the world, including from suppliers in New York. And the last one is a company called YPF, which is an international oil production company that recently was nationalized by Argentina.

THE COURT: International what?

MR. COHEN: Oil production and distribution company.

THE COURT: I take it what you are seeking is not a ruling, now, that there is the alter ego, but you are seeking discovery so that you can determine whether to make a final motion about alter ego; right?

MR. COHEN: That's correct, your Honor.

THE COURT: So you're seeking discovery.

MR. COHEN: Discovery.

THE COURT: Not the final declaration from the Court.

MR. COHEN: That's correct, your Honor. Just discovery.

And as to that discovery, essentially Argentina has argued that those entities are not responsible for the debts of Argentina, therefore we shouldn't be entitled to the discovery. And, again, we say that puts the rabbit in the hat. We can't determine whether or not they are the alter ego and are responsible for the debts until we get discovery. And our

discovery, we think, is measured, is not unduly burdensome given the enormous debt we're owed. And, in fact, Argentina really hasn't offered a significant argument that they can't give us the information. They just say, in effect, that you know we've not established that these people are their alter ego and are responsible for the debt and, therefore, we're not entitled to it. And, of course, that is directly contrary to the Rafidain holding in the Second Circuit which said that Judge Rakoff had erred and abused his discretion when he refused to allow discovery from a sovereign over which the Court had jurisdiction with respect to alter ego characteristics of another entity that plaintiff wanted to show was responsible for the debts of its debtor.

So, we think our discovery is measured, appropriate, and that their objections really have no basis.

THE COURT: Well, before I hear from Argentina, perhaps I should hear from the other plaintiffs.

MR. RAPPORT: Good afternoon, your Honor, Daniel Rapport from Friedman Kaplan. I represent the Aurelius and Blue Angel plaintiffs.

On March 7, your Honor issued an opinion in our case where you told us that we needed to tailor our discovery requests, and we did that. We submitted a reply brief that included tailored requests to Argentina and, also, to the banks. We have discovery to Argentina, and we have subpoenas

to five banks.
THE COURT: What banks are you --
MR. RAPPORT: CitiBank, Barclays, Deutsche Bank.
THE COURT: Just a minute.
MR. RAPPORT: Sorry.
THE COURT: Go ahead.
MR. RAPPORT: And two banks that have been before your Honor before, Bank of America, and BNA.
THE COURT: Okay.
MR. RAPPORT: We narrowed our requests and tailored OUR requests to focus on what we believe are the core categories of commercial activity and commercial assets; things like bank accounts, real estate, wire transfers, investments. We believe that the banks would have this information in computer format. And we believe that the Republic has this information, because it's own laws and regulations require it to collect much of this information, as well.
Notwithstanding our good faith efforts to narrow the requests, we still face various objections from the Republic and the banks. The first issue that I would like to address with your Honor concerns the entities that we have included on our list of entities within the definition of Argentina. There are 393 such entities. More than 70 percent of which are things such as ministries and secretariats. Things that there is no real dispute, they are part of the Republic.

There are, on our list, another 36 military or -- well, what the Republic is calling military or diplomatic entities, which Mr. Cohen just spoke about. And I'll say just on that issue, your Honor, it's not just that the Republic is saying we are not entitled to discovery of military or diplomatic assets. What they are saying is we are not entitled to discovery of assets held by ministries or agencies that they designate as military or diplomatic.

So, for example, they would bar all discovery concerning the ministry of justice and human rights. Which, by my view of it, doesn't necessarily subsume entirely military or diplomatic activity by that ministry, but we, under the Republic's view of the role would be completely barred from any discovery concerning that ministry.

So as I said, there is the 70 percent that are ministries and secretariats. There is this 36 purportedly military or diplomatic entities. And then there are 83 autarchic or decentralized entities, which Mr. Cohen was as mentioning them before. One of them is BCRA. But, again, the Republic and the banks, following in the Republic's footsteps, take issue with our including these entities on our list of the definition of Argentina --

THE COURT: What kind of entities are you talking about?

MR. RAPPORT: It's a good question.

These are entities that Argentina has set up to carry out its governmental functions, like the National Library, the National Endowment for the Arts, the National Securities Commission, the National Tax Tribunal, the Atomic Energy Commission, the Regulator of Water and Sanitation, the Civil Aviation Administration. That's just to give you a flavor of the sort of entities that we are talking about. And we have included them on our list, because they seem to be carrying out governmental functions. They were set up by Argentina to carry out governmental functions. And Argentina has a history of conducting its affairs and holding its assets through these entities, such as BCRA. So they take issue with our list of entities. And, by the way, I'll also mention that, in response to your Honor's March opinion, we deleted more than 100 state-owned companies that they took issue with.

So they take issue with all our list of entities. And we think that we're entitled to get discovery with respect to the assets of all of these entities, to the extent the Republic has the information, or the banks have the information.

So that's the first issue, your Honor.

The second issue is an issue that the banks have raised, where we have asked them to produce -- as I mentioned before, we subpoenaed basically five banks. There are more than five subpoenas, because we issued subpoenas to multiple members of a particular banking organization. But within each

of these banking organizations, we subpoenaed the top entity, the top parent entity. And the banks are complaining about producing documents or information that is maintained in the files of their subsidiaries.

There is no dispute that each of these top entities is subject to the jurisdiction of this Court. And we don't think that there is any real dispute that, as a practical matter, the apparent entity has the ability to get the document from the subsidiaries. If the CEO or CFO, or Chief Risk Officer of any of these entities wanted to get the information from their subsidiaries, they could get the information. And we think that the bank's own public statements make clear that as a practical matter they are acting as integrated international banking organizations. And this is all set out in our briefs, as well.

The next issue concerns the Separate Entity Doctrine. And CitiBank and Deutsche Bank have raised that doctrine as an excuse for not producing information from their overseas branches. The Separate Entity Doctrine, to the extent it is still good law, applies, if at all, to attachment and execution. And it says: If assets are held in an overseas branch, or assets are held in a branch that wasn't subject to the subpoena, or was not served with the subpoena, you may not be able to attach or execute those assets. But that has nothing to do with discovery.

And, indeed, New York law, and in particular a provision of the CPLR 5224(a)(1), specifically requires that third parties, such as the banks, with information about judgment creditors, should provide that information whether the materials sought are within, quote, "within or without the state." And I'll just mentioned that this Court has previously ordered CitiBank to produce information from its Argentine branch.

There is a decision from a New York State Supreme Court, trial court, the Ayyash decision that CitiBank and Deutsche Bank latch onto, where the Court denied a motion to compel. That decision is on appeal, and we think it is at odds with every other decision concerning the Separate Entity Doctrine, which has only applied the Separate Entity Doctrine in the context of attachment and execution, and not in the context of discovery.

And I'll also point out that there is a pretty fundamental difference between the facts of the Ayyash case and facts here. In Ayyash the Court noted that there was an absence of any connection of the party, the underlying controversy, or any race in New York. Well, here, we clearly have a strong connection to New York. Argentina consented to jurisdiction here. And the contract in dispute is governed by New York law.

Next, we hear from the banks that we should proceed

first through the Hague Convention, and that we have to proceed first through the Hague Convention before serving subpoenas here.

Well, this Court has, as noted, previously ordered BNA, and B of A, and CitiBank to produce information without ever requiring that any of the creditors here go through the Hague Convention. And that's not surprising, because the Supreme Court and the Second Circuit, long ago, rejected the notion that you had to proceed in the first instance through the Hague Convention.

And on the foreign law issue, your Honor recently dealt with this issue in the NML cases with respect to various foreign law objections that were raised by BNA.

There is a plethora of authority that foreign law is not a bar to a bank complying with a valid discovery order, and that's exactly what your Honor found in the context of the DNA foreign law objections, with respect to the laws of Argentina, and Spain, and Brazil, and Bolivia, the Cayman Islands, Chile, Panama, and Paraguay.

Your Honor thought that there might be an issue with Uruguayan law. But, then, your Honor went through the restatement analysis with the various factors and restatement analysis, such as importance to the litigation, the specificity of the requests, the location of the information, the availability of alternative means, the hardship, good faith of

the party resisting the production, the balance of national interest. In balancing and weighing all of those factors, your Honor determined that even if Uruguay's law would have maybe barred production, under the restatement, production was still warranted here. And we believe that that same analysis, as to BNA, it is the exact same laws, it's the exact same assertions that they are making. And we believe that your Honor's decision in the NML cases with respect to the foreign law objections raised by BNA disposes of the BNA foreign law objections.

The other banks have not cited any particular foreign laws. And they said, wait a minute, it is too early, we don't know what jurisdictions are going to be in play. And what you, the plaintiffs, are basically asking us to do is to produce declarations from all of the jurisdictions where we operate.

That's not what we were saying.

THE COURT: What is it you're asking the banks to produce?

MR. RAPPORT: Yes. Your Honor, we have at this point five requests to the banks. We have two requests that concern accounts, where we ask them to identify accounts at the bank. And then the second request asks them to identify certain information with respect to those accounts.

Then we ask them to identify transfers that go through the bank. This is analogous to the requests that your Honor

saw previously in the NML request to BNA and B of A. And this is the same request that we have made here, and NML has made to the banks in its subpoenas to the banks, its subsequent round of subpoenas to the banks. That's the third request.

The fourth request is we asked the banks to identify any financial arrangements it has with Argentina. Here we're trying to explore all of these requests, and what we understand to be the businesses of the bank.

So the bank maintains accounts. And then the bank processes wire transfers and things like that. And then the bank enters into financial transactions with its customers; repo transactions, loans, and that sort of thing. And so we are asking the banks to identify the transactions that it has with Argentina, if it has any.

And then the fifth request asks the banks to identify if there have been any prospective, or any discussions concerning prospective loans or issuances of securities or the like. Because there were thinking, well, there have been such discussions. That might mean that there is money coming into Argentina. And we would like to be able to try to attach or execute on that money.

So those are the five requests that we have to the banks, your Honor.

THE COURT: All right. Who else for the plaintiff side? Anybody?

MR.GUSY: For the Scheck plaintiffs, your Honor.
The Scheck plaintiffs, of course, are in a different position, since they are German individuals --
THE COURT: You're Mister?
MR. GUSY: I'm sorry?
THE COURT: You're Mister?
MR. GUSY: Gusy.
THE COURT: All right, Mr. Gusy.
MR. GUSY: Thank you.
The issue involving the Scheck plaintiffs are in front of the Court by means of a motion from the Republic to quash our information subpoena that has been served in late November 2012. Of course the Scheck plaintiffs are in a different position than NML and Aurelius, inasmuch as these are not pari passu plaintiffs as we established early on, but they are also individuals that have paid a dollar for a dollar when subscribing to the underlying bonds.
I would reserve my right to respond to Argentina's arguments as far as the motion to quash is concerned, inasmuch as Argentina might make additional points that have not yet been addressed by my colleagues Cohen and Rapport. And the only preliminary matter I would like to address is that there is a motion pending to confirm or, in the alternative, to renew plaintiff's restraining notice. Of course, the FSIA requires the plaintiffs to identify specific assets for them to be

restrained by this Court.
THE COURT: I thought we were here just on discovery.
MR. GUSY: Yes, your Honor.
The first part of the motion to quash the information subpoena that the Scheck plaintiffs have served are solely related to discovery. However, since the information subpoena was served together with a restraining notice, if you want an adjunct to this motion that entails the Scheck plaintiffs asking to confirm, or in the alternative to renew, the restraining notice that has been served, I'm fully aware of the plaintiff's obligation to identify specific assets. And that's why I wanted to address it at this point. Of course without having received the information that we are seeking by means of having served information subpoenas --
THE COURT: I wonder if it would be possible, so that we can -- we have got a lot of work to do on discovery. Could we simply separate out your motion about restraining?
MR. GUSY: Your Honor, that's what I wanted to do, if I may interrupt. I wanted to withdraw the request.
THE COURT: Oh, I didn't understand it.
MR. GUSY: So we do not have to address it, here, in this forum.
THE COURT: All right, fine. Motion granted to withdraw, all right.
All right, now, from the Republic.

MR. BOCCUZZI: Good afternoon, your Honor, Carmine Boccuzzi, for Argentina.

Just to go through the motions that you have before you. We are here today because in March when your Honor reviewed the discovery demands made by Aurelius, your Honor wrote in your decision that the requests were not appropriately tailored, and you said that we needed to have a conference to discuss that. And you sort of put, as a framework, that really we need to have discovery regarding assets that could realistically be seized by plaintiffs. And so we're here because in March you had before you a subpoena and demand that said Argentina is 400-plus entities. Now, the demands are that Argentina is 300-plus entities. And there is no narrowing at all. Mr. Cohen was saying, in terms of military, diplomatic, and other categories of information that, in your Honor's words, can not realistically be attachable. And we know that these could not be realistically attachable, because NML has tried to attach diplomatic accounts -- or the creditors have tried this. Or military property in Germany, in France, in Belgium, and in Ghana. And all those attempts have been rejected.

And, similarly, we know these alter ego allegations that Mr. Cohen was talking about also do not lead to attachable property, because we have litigated before your Honor the status of Enarsa, that is the oil company that we were

discussing just a few minutes ago, Mr. Cohen was discussing a few minutes ago. And your Honor, twice, granted motions to dismiss made by Enarsa and the Republic that sought to claim that there was an alter ego relationship here.

BNA, the state-owned bank, again in the context of both attachment efforts of assets of BNA which NML withdrew and then, later, with a full alter ego complaint before your Honor, affidavits, documents, your Honor rejected the complaint, dismissed the complaint, denied discovery, and that discovery that you denied looked much like the discovery they are asking for today. A decade of communications between Argentina and BNA. All transactions for a decade.

The purported reason was the plaintiffs were saying we need to know all of this, because then we'll show you their alter ego. Your Honor said, no, I have the material and the information before me, denied the discovery. The Second Circuit affirmed all of that, the dismissal of the complaint and the denial of the discovery.

YPF is a state-owned company. NML has tried to get discovery from a third party in California, from Chevron. The magistrate judge had said, no, you don't get that discovery because there are no facts that you have put forward, plausible allegations that there is an alter ego relationship here.

And in Texas, where they are pursuing discovery as well related to YPF, they told the Court they are planning to

file a complaint alleging alter ego. They have not done that, so they shouldn't get discovery based on implausible theories of alter ego. I would say YPF has a huge public float. Lots and lots of people, owning lots of shares of YPF. And so we have the problem that your Honor identified in rejecting the alter ego theory from BNA, that that would work a tremendous harm on the shareholders of YPF, the creditors of YPF, the employees of YPF, who one day would wake up and, under NML's theory, find that this country in fact was liable for the obligations of the Republic of Argentina.

Finally, as to BCRA, again, your Honor, you will be hearing us at the end of this month. They have brought an alter ego complaint against BCRA. They have had years of discovery about BCRA and its accounts in New York, and what those reserves were doing and being used for. That was all litigated. And your Honor is gonna hear the motions to dismiss on that alter ego complaint.

So if we just sort of take a step back and just think, both as a practical matter what it is they are asking for, and whether it reaches your Honor's standard of realistically leading somewhere, the answer is no. And the same logic applies to the military and diplomatic theories that they put forward as well.

And on that, just to take a step back, Mr. Cohen referred to it, he is correct that there is a petition

certiorari pending in the Supreme Court. The Supreme Court has asked for the views of the solicitor general of the United States. And we're going to see what happens I think very soon with that case on those issues.

But even putting aside that teeing up of that issue for the Supreme Court, the Second Circuit said it's up to your Honor to make sure the discovery demands are prudential and proportionate, and discovery of diplomatic and military property just simply doesn't satisfy those standards. And the only theory that we have heard is that maybe Argentina is using the old military account to pay its debt. We know that's not true. That is just speculation. We know it is not true because there has also been litigation in this Court about how Argentina pays it debts, and how it pays its bondholders. And we're keeping the payment mechanism the same, because of your Honor's order in connection with the pari passu litigation.

So all of this is -- they need to -- we're not just folding our arms. We are saying come forward with something that's a little narrower, really a lot narrower -- I don't mean to be sarcastic. A lot narrower than saying 400 entities, all over the world, diplomatic, military, basically everything. Because that's not prudential and that's not proportional, and that's not going to get us anywhere. And the important thing, your Honor, is in addition to the information they have got through this litigation that has been before your Honor and in

other jurisdictions, they have access to a lot of information. Because a lot of this information is publicly available. The Aurelius plaintiffs reference in their brief -- there's actually a data base, publicly available, of all of the contracts entered into by Argentina. They can get into that data base. It is -- go on the internet, it is there. They can pull stuff off there. And they can say, look, here is a theory, here is commercial activity, we want discovery.

We would deal with that. But that's not what they are doing. And so we're just left with these very blanket demands.

And the other avenue of information they have gotten from your Honor, and this is part of the appeal that is going on, we're trying to bring it to the Supreme Court. But in getting the discovery they got from Banco De La Nacion and Bank of America, they got wire transfer information about all of the entities. Any dollar transaction goes through New York. They got thousands of transactions, information about thousands of transactions from that discovery. And your Honor also required Banco De La Nacion to produce information from outside of the United States. So they had all of that information. The original theory presented to your Honor was they need to know about Argentina's financial circulatory system. They have gotten the information that shows money flows. And they have not found properly attachable property. But that just sort of shows the situation we're dealing with. Argentina is not

Exxon, it's a government. And so the examples that Mr. Rapport gave were very telling. He said we wanted to know about the libraries, books in Argentina. Your Honor said in the March order, no discovery of assets in Argentina. But, again, on their face, the subpoenas are not even limited there.

So I think it fails all of those tests. I think there should be narrowing on their part. We have tried to have dialogue. There is no agreement in terms of taking the hundreds of entities off the table. We keep bumping up against this insistence on diplomatic and military, which is very unprecedented to get that kind of information from a sovereign, particularly when there is no theory that it would be attachable. So I would say, for those reasons, I think plaintiff should go back and, either in the context of actually pleading a complaint, or narrower discovery demands, bring those forward. Otherwise, we are just left with very broad brush demands for everything. And I think at this stage, that's not appropriate given what your Honor said in March, and that not appropriate because they have gotten so much information, either from the two -- four banks, I'm sorry. Also Standard Charter produced and HSBC provided wire transfer information, as well as the information publicly available about the Republic's contracts, about its budgets, about analyses of the budgets. That's all out there. So I think they need to come forward, like any litigants and say I need

discovery of X-Y. Your Honor has presided over that in the past, that's in different areas. Patents, we were here before your Honor on that. In this alter ego situations. When they wanted too much, your Honor said no. And I think those paradigms apply here, as well.

THE COURT: We're here today on what is really a new set of circumstances. We have the Second Circuit decision about the pari passu matter. The Second Circuit has stayed enforcement of that decision until the Supreme Court rules as to whether it will grant cert or not grant cert.

We have an announcement by Mr. Blackman to the Second Circuit that if the Second Circuit affirmed me, the Republic would not obey the order. And that was a prominent feature of the recent Second Circuit opinion which also in a footnote quoted similarly, let's put it mildly, defiant statements by officials in Argentina.

Now, I don't want to get one step further today than what is necessary. I don't know whether the Supreme Court will grant certiorari on the recent ruling of the Second Circuit. There are apparently some cert petitions about discovery rulings in the past, but although Mr. Boccuzzi makes a number of good points, in detail, the plaintiffs here are still faced with a republic who will not pay what is required of the Republic. Hopefully, when the Second Circuit decision becomes final, if the Supreme Court turns that down, that defiant

attitude will change. But these are steps for the future. Right now, what is going on is that certain of the plaintiffs are seeking rather wide-ranging discovery. Obviously, if they, or most of them, get paid in compliance with the Second Circuit ruling, if cert is turned down, then the need for a lot of this discovery will be gone. But, the plaintiffs have been pursuing, in all of these years, various ways to recover their just debts, including attempts to find assets against which they could recover. Admittedly, the position of the Republic to a point that it would not pay, has forced the plaintiffs to engage in difficult quests for means to obtain payment. And that has, to some extent, involved discovery.

The issue of discovery is not something that has come to this Court recently. The issue about discovery has been, in one way or another, before the Court over these many years. In dealing with the current discovery issues, the Court cannot really make any assumptions about what will happen on the pari passu issue, whether the Supreme Court will take cert, et cetera, et cetera.

The Court needs to deal with the issues as they now stand. And those issues very prominently include the kind of efforts that plaintiffs have been making over these many years to find assets to recover against.

And there is nothing that has happened which makes that an academic question. I have made certain rulings on

discovery. And the Court of Appeals has made certain rulings on discovery. One of the central features of those rulings is that the Foreign Sovereign Immunities Act does not really prevent discovery of the kind being sought. That is out of the picture. Also, what has been said by this Court in connection with the narrowing of the discovery requests, refining of discovery requests, I'm not gonna try to go over or apply what has been said in the past. My main answer to Mr. Boccuzzi is that his client will not pay the debts it owes, and this forces the plaintiffs either to give up, or to pursue a difficult path of getting information and trying to see if any information yields -- to repeat myself, yields information about recoverable assets.

And as far as I'm concerned, that is where we start today. It seems to me that the plaintiffs are attempting to embark on discovery which has surely been refined in response to what has gone on with the Court, and with the parties, in the past. And it seems to me, speaking generally, that the plaintiffs' discovery requests reasonably reflect the facts of this case, not facts of some other case, but the facts of this case. And the need, as I have said, either to give up, or to try to pursue the possibility of recovering against the Argentina Republic in view of its position it has taken.

Certain of the requests are, on their face, most strange. Request for discovery regarding military units,

diplomatic units, would normally be not even suggested and, perhaps, quite readily turned down by a Court. But we do not have a normal case. And the plaintiffs are anything but frivolous in seeking to have information about the possible use of some branch of the Republic to do something that that branch does not normally do, that is, deal with assets, et cetera.

On the alter ego point. In connection with the hundred million dollars deposited by BCRA at the Federal Reserve in the United States that was the subject of litigation, both in the District Court and in the Court of Appeals, although the Court of Appeals vacated my -- what the district court did, the Court of Appeals did not really hold against the alter ego concept. So that is still an open matter.

I think, however, that I have ruled about BNA. And I think we had better leave that off the list as far as alter ego discovery. But there still is an open issue about BCRA. And I think as far as discovery is concerned, Enarsa and YPF can be the subject of discovery.

As to the banks and the entities involved in the foreign operations and so forth, it seems to me there is one basic proposition. And that is the head office of a bank with foreign operations can obtain information from its foreign operations and, therefore, can be subject to discovery. That is a simple and basic proposition. And that seems to me to

settle the issue about the banks.

The motions to enforce the existing subpoenas are granted -- I'm sorry did you wish to speak?

A VOICE: You have not heard from the banks.

MR. CROFFOOT-SUEDE: Lance Croffoot-Suede on behalf of Barclays. Our first subject to the Aurelius' subpoena, not the NML's subpoena, other banks are subject to both, and I'm sure others will be speaking.

The one argument that has not been discussed here by either of the Aurelius plaintiffs, the NML plaintiffs, or the Republic, is the argument that it is premature for the banks to be required to produce discovery in response to requests that are, in the words of the Court, most strange in a case that the Court has characterized, quite appropriately, as a case that is not normal. It is perfectly true that we are merely third parties here, and that the Court did order this hearing in order to work out with Aurelius NML and the Republic, what the Republic should be doing to respond to Aurelius and NML's discovery requests. We would humbly submit that if the Court has resolved that issue, which it sounds like the Court has, that the Republic should be dispatched to comply with the Court's directive, produce the discovery that the Court is requiring it to produce, and have Aurelius and NML, in however many days, you know, after the discovery --

THE COURT: A subpoena has been served on Barclays,

has it not?
MR. CROFFOOT-SUEDE: Yes, it has, your Honor. But there is case law in this Circuit for the fact that third parties shouldn't be required to respond to subpoenas when the parties in the litigation may moot the issue. And the Republic of Argentina may very well produce discovery which at least IN part will obviate the need for the banks to respond to these most strange discovery requests that are --
THE COURT: I don't see that the discovery request against the banks is most strange at all.
MR. CROFFOOT-SUEDE: Your Honor had referenced earlier the fact that requests for discovery regarding diplomatic units and military operations certainly are not the typical requests for discovery. And the discovery requests levied against the banks are really not very different in substance at all from the discovery requests lodged against Argentina. And so all we're saying, your Honor, is before we have to respond to each and every discovery request, can't Argentina produce its discovery, and then have Aurelius and NML come back to us with more tailored discovery requests.
THE COURT: Thank you.
MR. KERR: My name is James Kerr. And I'm here with Karen Wagner, Counsel for CitiBank and various Citi entities.
Your Honor, back in March, you looked at the subpoena that the Aurelius parties had served that defined Argentina to

consist of 461 entities, and concluded that that really needed to be tailored. You heard this afternoon Mr. Rapport indicate that they had tailored their subpoena. What they did was to reduce it to 361 entities and recast the balance of it to basically request the same data.

Your Honor, I acknowledge your basic frustration here. And you have indicated that they either need to take discovery or give up. We have made an offer, not long after the Second Circuit issued its FSIA decision, we made a proposal to the Aurelius parties. And incidentally, the Scheck parties have not served a subpoena. And we're in discussion as of this moment with the NML parties.

We offered to search the SWIFT database of CitiBank and to identify transfers that were being made to and from entities that were clearly a part of the Republic of Argentina, the ministry of economy and finance, other ministries that are indistinguishable from the Republic itself. We objected to wholly-owned entities and only partially-owned entities on the theory that that got into alter ego grounds. And to some extent, what they did in tailoring their subpoena was to eliminate --

THE COURT: They being?

MR. KERR: They, Aurelius.

THE COURT: Okay.

MR. KERR: Eliminated most of the

partially-owned entities that were problematic.

And we did do a search of all of the entities that they have now listed, including the 361, and have no domestic accounts. That doesn't deal with the extraterritorial aspect of it.

What we propose to do is to search this SWIFT database which Mr. Cohen, you know, many months ago explained would provide the financial circulatory system of Argentina. We would identify wire transfers sent by the Ministry of Economy and Finance, for example, from Argentina, which would show up in the U.S. database. If that wire transfer were going to another account of the Ministry of Economy and Finance, that would be reflected in the records that we would be making available to them.

If an account for the Ministry of Economy and Finance were identified as being in France, that would give them an account number, a location, and the confirmed existence of an account, so they could pursue discovery either directly of that particular account, if it happened to be at a CitiBank branch, or if it happened to be, for example, at a JPM Chase or Barclays branch.

Also, the discovery that they take of Bank of America and Barclays, if it shows wire transfer activity going to a CitiBank account that is in the name of one of these entities, that would disclose the target for a search.

We're trying to make available to them information that would permit them to, quote, follow the money, which is what they're interested in doing.

Instead of getting back to us -- and our offer was made on the seventh of October last year. Instead of getting back to us, they adjourned, you know, their response to our motion to quash, on three occasions, finally responding in May of this year with this tailored but scarcely different subpoena. And they've still never taken us up on our offer, which was not a take-it-or-leave-it offer. We were trying to suggest a way of a narrowing the number of jurisdictions that needed to be searched. After all, CitiBank, for example, has offices in more than a hundred countries. And some of these countries do have bank secrecy laws.

And in the case of an entity, an organization like CitiBank, even if the head office does request that information, it has to do it in a way that is consistent with the laws of the jurisdiction, or it's gotta leave that jurisdiction.

All of this is by way of saying we have suggested a practical way to get them to where they can identify real property accounts. They want accounts, this will do it. And I would submit, your Honor, that this is a way that is both consistent with their interest in identifying property, and our interest in avoiding just an extraordinary and absolutely

unprecedentedly broad subpoena.

I would also like to, you know, just speak to one thing Mr. Rapport mentioned. He said that the Separate Entity Doctrine is limited entirely to enforcement, attachment, and execution. It often comes up in that context, but it's clearly not limited to it. He mentioned the Ayyash case, which I think actually provides guidance. It was another case seeking world-wide discovery, world-wide discovery without any particular reason for pointing in any particular place.

The Court said it was simply not a practical and realistic burden to impose on a bank, just because it happened to be in the Southern District of New York. But I would also say that the Second Circuit has not limited the Separate Entity Doctrine to execution and attachment.

Many years ago, they decided the case of INGS vs. Ferguson, in which they declined to require a branch of Chase in Canada to produce documents if it would be in contravention of Canadian law. Judge Rakoff cited that the opinion in INGS v. Ferguson very recently in his opinion in one of the Motorola cases. And I would submit that that remains a viable application of the balancing test that the restatement urges be applied before requiring off-shore discovery.

We've laid out all of these arguments in our brief. And I really think that it's important for the scope of these subpoenas to be narrowed. We've offered to work with them.

We've tried endlessly to come up with a search protocol that would permit us to --

THE COURT: Are you negotiating with NML attorneys now?

MR. KERR: I'm talking about --

THE COURT: No, I mean I thought you said you were negotiating with --

MR. KERR: We have been -- our discussions with NML are continuing --

THE COURT: So they're continuing.

MR. KERR: They're continuing.

THE COURT: All right.

MR. KERR: And we have offered to do this with the Aurelius parties. They basically say we want the entire 361, you know, we won't stop at anything short of that.

I guess we have been trying to come up with a search protocol that will even -- and one thing they did do that was positive, they limited the time frame covered by their search. But one of the problems with that, is even with, you know, high speed computer technology, when you have that many names to search, and even when you shrink it down to the 150 names that we were using in one of the searches that we have been trying develop, it slows the search down. You can only do a few days at a time. So it becomes a very more time-intensive and expensive proposition.

THE COURT: Can I interrupt you?
MR. KERR: Yeah, I -- may I say one more thing, your Honor?
THE COURT: Sure.
MR. KERR: They have not offered to reimburse us for our expenses in doing that.
THE COURT: Okay.
Now, I think you can sense from what I said that I have a basic, and I emphasize basic view, that the discovery requested should go forward.
Now, what you have presented in your statement is certainly not -- it's not unresponsive at all. And what I think you're saying is that you're trying to respond to the request and the subpoena, whatever it is, in the way that you have described. Now, I don't know enough to evaluate the details of what you have said, but on the face of it, what you have said makes sense.
And I would just go back to Mr. Rapport.
MR. RAPPORT: Rapport, your Honor.
THE COURT: Isn't it something that you should respond to?
MR. RAPPORT: Yes, your Honor. And I would like the opportunity to do that. Much of what you heard today is news to me. So, for example, I did not know that they had searched for domestic accounts for all 363 entities. I did not know

about --
THE COURT: What Mr. Kerr said is that he had made a --
MR. RAPPORT: Yes.
THE COURT: -- presentation, and that you had not responded to that presentation -- I'm not talking about a presentation in court --
MR. RAPPORT: I understand.
THE COURT: -- I mean presentation --
MR. RAPPORT: That's not true.
What they made was an offer. They were -- just a little bit of context.
Days before we filed our motion to compel, after 10 months of trying to negotiate, the banks all come together with this coordinated effort where, the day or two before we file our brief, or the day or two after we file our brief, they basically all give us the same offer. And the offer is, only the 94 entities that the Republic has blessed. They are only going to search U.S. dollar. They are only going to search for U.S. based accounts or lending relationships. And not all of the banks even agreed to do that. None agreed to produce the information, but they said well, we'll look for it, and then we'll decide whether or not they are foreign law issues, and it was all, this is the deal, and no followups. This is --
THE COURT: No what?

MR. RAPPORT: No followups. This is the deal and if -- and this is going to be full satisfaction of the subpoena. We said back to them -- we didn't say no. We had reasonable questions back to them. We said explain how the searches are going to be conducted. All that you heard today about how the number of names, and two days, whatever, that has not been part of the discussion. We have been saying to them let's have a dialogue about search protocols. They're not willing to have that dialogue with us. We say to them, why aren't you going to produce information from your corporate subsidiaries. We say to them, why are you limiting it to the 94 entities, why are you not searching for information outside of the U. S. Why not search for assets or relationships outside of the U.S. We asked them, and we say to them, so why is it reasonable for us to forfeit further compliance with the subpoenas just because you do this.

They write back two weeks later and say that they are going to assume that we have rejected the proposals. We didn't reject the proposals, we asked reasonable follow up questions that you would expect in a meet-and-confer process.

Then, once your Honor issues this March 7 opinion, we tailor our requests, and have our reply brief. Days -- or weeks, I should say, before that previously-scheduled hearing in August, they say let's have another meet-and-confer. And at that meet-and-confer, they say, well, why don't you eliminate

wholesale certain categories of entities; why don't you eliminate this category, why don't you eliminate that category.

We say to them, you know what, there is no good reason for us to eliminate these categories. If it is a question of burden, we're glad to have that conversation with you, and we'll talk to you about it, and tell us what the search protocol is, we'll give you search terms, we'll figure it out. Nothing. So that's really where we are. So if they want to talk about --

THE COURT: Can I interrupt you? Okay.

MR. KERR: Your Honor, if I may --

THE COURT: It very often happens that people in negotiations or discussions outside of court are a little rougher than they are in court.

Now, I have heard what you have said, Mr. Rapport, I have heard what Mr. Kerr said. I'm not going to hold a hearing and take evidence and make judgments on credibility about what happened in the dealings between you two. All I know is, that there should be dealings in good faith. There are complexities here. It does not take away from my view that on the basic question of whether there will or will not be a valid subpoena, if a subpoena has been served, then the subpoena has been served. It should lead to discussion. It should lead to a discussion of the kind of thing Mr. Kerr described very well, and you described very well. But that discussion cannot

continue or be concluded this afternoon. I have got motions before me.

And I'm granting all motions to enforce the subpoenas, and denying all motions to quash. And I'm doing that with complete respect for what has been presented by Mr. Kerr and others, and knowing the fact of life that the discussions have got to exist.

The carrying out of this process is complicated. And it will take discussions. And that will take place after today's hearing, it will not be finished at today's hearing. And nothing will be finished, except I'm granting, I'm ruling on the motions, as I have said.

And, with that, we are concluded.

If somebody could propose an order, I will -- on notice, I'll sign the order.

MR. COHEN: Thank you, your Honor.

MR. RAPPORT: Thank you, your Honor.

(Adjourned)